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SENATE BILL 307 By  
Fowler

HOUSE BILL 1223  
By Scroggs

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 21; Title 4, Chapter 3; Title 7, Chapter 60; Title 8, Chapter 30, Part 2; Title 8, Chapter 30, Part 3; Section 13-23-103; Section 37-5-116; Section 49-11-105; Section 49-4-301; Section 49-6-3109; Title 56, Chapter 7; Section 62-13-312; Title 68, Chapter 14, Part 6 and Section 68-11-702, relative to genetic information nondiscrimination and to create a special study committee regarding genetic information.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

WHEREAS, the general assembly finds and declares the following to be goals of Tennessee public policy:

(1) protection of the results of genetic tests as private information and preventing disclosure of such results without the informed consent of the person or persons to whom the information pertains;

(2) preventing discrimination in employment practices, housing, home mortgages, human rights, public accommodations and public programs based upon the results of or use of genetic tests; and

(3) preventing discrimination by providers of health, life, disability and long-term care insurance based upon the results of or use of genetic tests;

WHEREAS, it is a goal of this legislation to achieve these purposes without unduly limiting medical research;

WHEREAS, it is a goal of this legislation to establish a study committee to recommend future appropriate uses of genetic information and to permit limited and specifically defined use of genetic information until such recommendations are made and acted upon; now, therefore,

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, is amended by deleting Part 27 in its entirety and by substituting instead the following:

**Section 56-7-2701.** This part shall be known and may be cited as the "Genetic Information Nondiscrimination in Insurance Act of 2001.".

**Section 56-7-2702.** As used in this part, unless otherwise specified or the context otherwise requires:

(1) "Commissioner" means the commissioner of commerce and insurance;

(2) "Family member" means, with respect to an individual, another individual related by blood to that individual;

(3) "Genetic information" means any individually identifiable result of a genetic test as defined by this section or explanation of such a result. For purposes of this part, the term "genetic information" shall not include any information about an identifiable person that is taken:

(A) as a biopsy, autopsy, or clinical specimen solely for the purpose of conducting an immediate clinical or diagnostic test, or

information from a physical examination or chemical, blood or urine analysis, or any test that is performed for the purpose of detecting or diagnosing an existing disease process, or any test performed due to the presence of symptoms of disease, illness or impairment that is not a test of DNA, RNA, mitochondrial DNA, chromosomes or proteins;

(B) as a blood sample solely for blood banking;

(C) as newborn screening required pursuant to Title 68, Chapter 5, Part 4;

(D) as confidential research information for use in epidemiological and clinical research conducted for the purpose of generating scientific knowledge about genes or learning about genes or learning about genetic basis of disease or for developing pharmaceutical and other treatments of disease;

(E) as information in response to questions related to an actual disease, illness or impairment of an applicant or the applicant's family, so long as such questioning does not solicit or seek information pertaining to genetic tests or information;

(F) and used exclusively for paternity testing pursuant to Title 36;  
and

(G) as information pertaining to the abuse of drugs or alcohol which is derived from tests given for the exclusive purpose of determining the abuse of drugs or alcohol;

(4) "Genetic test" means a test of human DNA, RNA, mitochondrial DNA, chromosomes or proteins for the purpose of identifying genes, inherited or acquired genetic abnormalities, or the presence or absence of inherited or acquired characteristics in genetic material. For the purposes of this part, the

term genetic test shall not include tests given for drugs, alcohol, cholesterol or HIV; nor any test for the purpose of diagnosing or detecting an existing disease, illness, impairment or disorder;

(5) "Health Insurance provider" means any insurer or other entity providing health insurance coverage, including:

(A) a group health plan; or

(B) any other health insurance arrangement, including any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract.

(6) "Informed consent" means a written consent authorizing release of a person's genetic information, or for the release of medical records containing such information. Such authorization shall state the purpose for which the information is being requested; shall identify the person to whom the disclosure may be made; shall contain a statement that, prior to signing the consent form, the consenting person discussed with the medical practitioner ordering the test, the reliability of test results and the level of certainty for prediction of disease or condition; shall not be included in a general release or form for the release of any other medical information; and shall be required for each disclosure of information. In the case of an unemancipated minor, such consent may be authorized by the parent or lawful custodian;

(7) "Person" includes corporations, companies, associations, firms, partnerships, societies, and any other type of entity, as well as individuals.

**Section 56-7-2703.**

(a) A health insurance provider, as defined in this part, shall not:

(1) cancel, refuse to issue or renew any health insurance coverage, as defined in Section 56-7-2703(5), or in any way make or permit any distinction or discrimination in the amount of premiums or rates charged, in the length of coverage, or in any other terms or conditions of any policy or coverage based upon genetic information as defined in this part, or on the basis that the individual or a family member has requested or received genetic services; or

(2) solicit or require genetic tests or disclosure of any genetic information as a condition of the issuance or renewal of any policy or coverage that is covered by this part.

**Section 56-7-2704.**

(a) Genetic information contained in medical, hospital, laboratory, hospital-affiliated registry, physician, insurance provider and commercial genetic testing company or entity records or reports shall be confidential and shall not be released without an informed, written consent or as otherwise provided in this part. An informed consent form shall state the purpose for which the information is being requested, shall identify the person to whom the disclosure would be made, shall not be included in a general release or a form for the release of any other medical information, and shall be required for each disclosure of information.

(b) The commissioner, with the assistance of the commissioner of the department of health, shall promulgate rules pursuant to the Uniform Administrative Procedures Act of Title 4, Chapter 5, to authorize release or access to genetic information for the following purposes:

(1) pursuant to judicial order;

(2) to a person whose official duties entitle the requestor to receipt of the information contained therein, which shall expressly include members and staff of

the study committee created pursuant to Section 33 of this act as well as law enforcement officers in the execution of official duties; and

(3) for use as confidential information in epidemiological or clinical research conducted for the purpose of generating scientific knowledge about genes or the genetic basis of disease, or for developing pharmaceutical and other treatments of disease.

(c) A laboratory receiving a request to conduct a genetic test from a health facility, physician or health care provider may conduct the test only when the request is accompanied by a copy of a proper informed consent or by a signed statement of the medical practitioner ordering the test warranting that the appropriate prior written consent has been obtained from the patient. This requirement shall not apply when the test pertains to any item excluded from the definition of "genetic information" under Section 56-7-2702 or as provided in rules promulgated to effectuate this part.

(d) No health facility, physician, health provider or other person shall:

(1) test any person for genetic information without first obtaining informed consent as defined in this part;

(2) disclose the results of a genetic test to any person other than the subject thereof without first obtaining informed written consent, except as authorized under this part or by rules promulgated to effectuate this part; or

(3) release any information that would identify or tend to identify the person being tested to any other person without first obtaining informed consent or as otherwise authorized under this part or by rules promulgated to effectuate this part.

**Section 56-7-2705.**

(a) No insurer, agent, broker or person authorized to issue life, disability income, or long-term care policies in Tennessee shall:

(1) practice unfair discrimination against a person because of the results of a genetic test or based upon genetic information, except as provided herein.

For purposes of this section, unfair discrimination means cancellation, refusing to issue or renew, charging any increased rate, restricting any length of coverage or in any way practicing discrimination against a person unless such action is taken pursuant to reliable information relating to the insured's mortality or morbidity, based upon sound actuarial principles or actual or reasonably anticipated claim experience; or

(2) require an applicant to undergo a genetic test as a condition of the issuance or renewal of such a policy.

(b)(1) An insurer, agent, broker or person authorized to issue life, disability income, or long-term care policies in this state may ask on an application for such coverage whether or not the applicant has taken a genetic test as defined by this part. The application form must state that the applicant is not required to answer any questions concerning genetic testing or information but that failure to do so may result in an increased rate or denial of coverage. If an applicant provides genetic information, the insurer is authorized to use that information to set the terms of a policy provided that the information is reliable information relating to the insured's mortality or morbidity, based upon sound actuarial principles, or actual or reasonably anticipated claim experiences.

(2) If the commissioner has reason to believe that unfair discrimination as defined in this section has occurred, and that a proceeding by the commissioner would be in the interest of the public, the commissioner shall, in accordance with Section 56-8-108, issue a statement of charges and notice of hearing. Upon a determination that the practice or act is inconsistent with this part, the commissioner may issue an order to cease and desist, may order payment of a

civil penalty pursuant to Section 56-8-109, and may take any other action provided by law.

(3) Where a cease and desist order has been issued, the commissioner, in consultation with the commissioner of the department of health, shall hold a public hearing and may, by order, determine, based upon actuarial principles or actual or anticipated claim experience, that the genetic test which is the subject of such order provides no reliable information relating to the insured's morbidity or mortality and that its use would constitute unfair discrimination. At least annually, the commissioner shall review such order to assure that the determination remains current and shall amend, modify or rescind the order as needed. After a public hearing in consultation with the commissioner of the department of health, the commissioner may issue an advisory opinion on whether a genetic test provides no reliable information relating to an insured's morbidity or mortality, based upon sound actuarial principles or actual or reasonably anticipated claim experience.

**Section 56-7-2706.**

Nothing in this part shall require any insurance provider to provide coverage of genetic services, unless the coverage of genetic services is already included within the scope of benefits of the provider's insurance coverage.

**Section 56-7-2707.**

(a) A violation of this part shall constitute an unfair or deceptive act or practice pursuant to Title 56, Chapter 8, Part 1, and is subject to any remedy or action provided by law.

(b)(1) The commissioner of commerce and insurance shall enforce the requirements of this part, but shall have no jurisdiction over employee health benefit



plans covered by the federal Employee Retirement Income Security Act of 1974 ("ERISA").

(2) The commissioner shall promulgate regulations pursuant to the Uniform Administrative Procedures Act, Title 4, Chapter 5, as may be necessary or appropriate to carry out this part.

(c)(1) In addition to any other remedies that may be provided by law, a person may bring a civil action:

(A) To enjoin any act or practice that violates this part; and

(B) To obtain other appropriate relief to redress such violations, including monetary damages.

(2) The circuit and chancery courts have concurrent jurisdiction for an action under this act.

SECTION 2. Tennessee Code Annotated, Section 4-21-101(a)(3), is amended by inserting after the word "age" and before the words "or national origin" in the second line, the language " , genetic information, as defined in § 56-7-2702(3),".

SECTION 3. Tennessee Code Annotated, Section 4-21-102(3), is amended by inserting after the word "age" and before the words "or national origin" the language " , genetic information, as defined in § 56-7-2702(3),".

SECTION 4. Tennessee Code Annotated, Section 4-21-202(16)(A)(i), is amended by inserting after the word "age" the language " , genetic information as defined by § 56-7-2702(3),".

SECTION 5. Tennessee Code Annotated, Section 4-21-401(a)(1) and (2), are amended by inserting after the word "age" and before the words "or national origin" the language " , genetic information, as defined in § 56-7-2702(3),".

SECTION 6. Tennessee Code Annotated, Section 4-21-401(a), is further amended by deleting the word "or" after the language "national origin," at the end of subitem (1); by deleting

the punctuation "." at the end of subitem (2) and by substituting instead the punctuation ";" and by adding the following appropriately designated subdivisions:

(3) Collect, solicit or require disclosure of genetic information from any person as a condition of employment;

(4) Solicit submission to, require, or administer a genetic test, as defined by § 56-7-2702 (4), to any person as a condition of employment;

(5) Offer a person an inducement to undergo a genetic test or otherwise disclose genetic information; or

(6) Question a person about his or her genetic information or that of his or her family members, or inquire about previous genetic testing.

SECTION 7. Tennessee Code Annotated, Sections 4-21-402(1) and (2), are amended by inserting after the word "age" and before the words "national origin" the language " , genetic information, as defined by § 56-7-2702 (3),".

SECTION 8. Tennessee Code Annotated, Section 4-21-402, is further amended by deleting the word "or" after the words " national origin" at the end of subitem (2); and by adding the following as appropriately numbered subdivisions immediately preceding the last subdivision and by appropriately renumbering the last subdivision:

(3) Collect, solicit, or require disclosure of genetic information from any person as a condition of membership;

(4) Solicit submission to, require, or administer a genetic test to any person as a condition of membership;

(5) Offer a person an inducement to undergo a genetic test or otherwise disclose genetic information;

(6) Question a person about his or her genetic information or that of his or her family members, or inquire about previous genetic testing; or

SECTION 9. Tennessee Code Annotated, Section 4-21-403, is amended by inserting after the word "age" and before the words "or national origin" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 10. Tennessee Code Annotated, Sections 4-21-404(1) and (2), are amended by inserting after the language "color," and before the word "religion" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 11. Tennessee Code Annotated, Section 4-3-1412, is amended by inserting after the language "origin," and before the word "age", the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 12. Tennessee Code Annotated, Section 4-21-501, is amended by inserting after the language "sex," the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 13. Tennessee Code Annotated, Section 4-21-502, is amended by inserting after the word "sex" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 14. Tennessee Code Annotated, Section 4-21-601, is amended in the first part of the sentence and in subdivision (5) by inserting after the words "familial status" the language "genetic information, as defined by § 56-7-2702(3),".

SECTION 15. Tennessee Code Annotated, Section 4-21-601(c), is amended by inserting after the word "sex", the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 16. Tennessee Code Annotated, Section 4-21-603(1), is amended by inserting after the words "familial status" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 17. Tennessee Code Annotated, Sections 4-21-604(a) and (b), are amended by inserting after the word "sex" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 18. Tennessee Code Annotated, Section 4-21-606(a), is amended by inserting after the word "sex" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 19. Tennessee Code Annotated, Section 4-21-904, is amended by inserting after the language "race," the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 20. Tennessee Code Annotated, Section 7-60-102(8), is amended by inserting after the word "age" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 21. Tennessee Code Annotated, Section 8-30-221, is amended by inserting after the word "race" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 22. Tennessee Code Annotated, Section 8-30-326(a), is amended by inserting after the word "age" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 23. Tennessee Code Annotated, Section 8-30-333(b), is amended by inserting after the word "color" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 24. Tennessee Code Annotated, Section 13-23-103(15), is amended by inserting after the word "age" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 25. Tennessee Code Annotated, Section 37-5-116, is amended by inserting after the word "age," the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 26. Tennessee Code Annotated, Section 49-4-301(a)(2), is amended by inserting after the word "sex" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 27. Tennessee Code Annotated, Sections 49-6-3109(a) and (b), are amended by inserting after the word "color" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 28. Tennessee Code Annotated, Section 49-11-105(a), is amended by inserting after the word "sex" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 29. Tennessee Code Annotated, Section 62-13-312(b)(13), is amended by inserting after the word "sex" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 30. Tennessee Code Annotated, Section 68-11-702(a)(4), is amended by inserting after the word "religion" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 31. Tennessee Code Annotated, Section 68-14-602(b), is amended by inserting after the word "sex" the language ", genetic information, as defined in § 56-7-2702(3),".

SECTION 32. Tennessee Code Annotated, Section 68-14-605(6), is amended by inserting after the word "sex" the language ", genetic information, as defined by § 56-7-2702(3),".

SECTION 33(a). The department of commerce and insurance with assistance from the department of health shall establish a special study committee to investigate the use of genetic test results in connection with the issuance of life, disability, and long-term care insurance and related to home mortgages. The committee shall: (1) investigate the methods utilized in such life, long-term care and disability industries in the acquisition, dissemination and protection of genetic information of insurance applicants; (2) investigate the utility and necessity of giving life, long-term care and disability insurers the power to require a genetic test of insurance applicants; and (3) make recommendations of any changes necessary to protect the privacy of insurance applicants in connection with genetic information, and necessary to address the potential for fraud and misrepresentation by applicants.

(b) The study committee shall consist of twelve (12) members, including three (3) non-voting ex officio members of the house of representatives to be appointed by the speaker of the house of representatives; three (3) non-voting ex officio members of the senate to be appointed

by the speaker of the senate; the commissioner of the department of health or designee; the commissioner of commerce and insurance or designee; and three (3) members who shall be named by the governor, one of whom shall be a representative from the life insurance community, one of whom shall be a representative of the Tennessee Medical Association, and one of whom shall be a representative from the field of science, with education in the subject of genetics.

SECTION 34. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 35. This act shall take effect July 1, 2001, the public welfare requiring it.